



Billing Code: 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5913-C-34]

60-Day Notice of Proposed Information Collection:

FHA Single Family Model Mortgage Documents

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Correction; Notice.

SUMMARY: This notice corrects the document HUD published at 81 FR 84608, November 23, 2016. HUD is amending both paragraphs on page 4. HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: Comments Due Date: **[Insert date that is 60 days after the date of publication in the Federal Register.]**

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of

the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Kevin Stevens, 451 7th Street, SW, Washington, DC 20410; e-mail Kevin L. Stevens@hud.gov; or telephone 202-402-2673. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA Single Family Model Mortgage Documents.

OMB Approval Number: 2502-New.

Type of Request: Approval of a new collection of information.

Form Number: N/A.

Description of the need for the information and proposed use:

This notice advises of FHA's review and proposed revisions to the Single Family Model Forward Mortgage document. Similar to FHA's review of its multifamily mortgage transactional documents, healthcare facilities transactional documents, and hospital transactional documents, FHA is reviewing its Single Family mortgage transactional documents to determine where revisions and updates may be needed. This notice presents one document that FHA has identified for review and update, and additional documents may be the subject of future notices for comment.

Proposed Changes to the Model Forward Mortgage Document

The following describes the changes proposed to be made to the Single Family Model Forward Mortgage document, which can be found, with the proposed changes to the document's terms highlighted, at HUD's website at

http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/SFH_policy_drafts.

Forward Mortgage

The majority of the proposed changes are conforming or technical in nature (e.g., correction of internal references and typographical errors). Included in this category is the proposed change to Section 19. As provided in FHA's Instructions for Model Mortgages (located at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/model_documents) the FHA Model Forward Mortgage document is based largely on the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association (the "Government Sponsored Enterprises" or "GSEs") security instrument covenants, with certain FHA-specific revisions. When incorporating the GSE covenants into the Model Forward Mortgage document, the second paragraph of Section 19 was unintentionally omitted, but reference to that paragraph was retained in the section heading, resulting in an apparent internal discrepancy in the Model Forward Mortgage. Because the omission of this paragraph was not identified as an FHA-Specific Modification (as that term is used in the Instructions for Model Mortgages), mortgagees have been free to adopt the analogous GSE covenant provision to resolve this discrepancy. Therefore, although the proposed change to Section 19 appear substantive, it should bring the Model Forward Mortgage into closer conformity with current FHA-insured mortgages and industry standard.

In addition to these technical changes, FHA is proposing one set of substantive changes to the Model Forward Mortgage, reflected in the judicial and non-judicial versions of Section 22 (hereinafter “Sections 22”) and Section 20. Prior to the September, 2014 publication of the current Model Forward Mortgage, the former Model Forward Mortgage contained the following provision: “[i]n many circumstances regulations issued by the Secretary will limit Lender rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.” (hereinafter “Paragraph 9(d)”). Because Paragraph 9(d) is not necessarily entailed by FHA regulatory or statutory authority, its omission was a natural consequence of the adoption of the GSE security instrument covenants. Mortgagees are obliged to fulfill their contractual and regulatory obligations to the Department, including commencing foreclosure upon satisfaction of certain regulatory preconditions, regardless of whether certain of those obligations are recited in or incorporated by reference into a separate mortgage contract with a borrower.

Since publication of the current FHA Model Forward Mortgage, however, FHA has been informed that Paragraph 9(d) has been viewed by borrowers as providing certain defenses to foreclosure actions, and has, on occasion, been successfully used to assert such defenses under circumstances where mortgagees allegedly fail to satisfy certain preconditions to foreclosure reflected in the Department’s regulations. The Department’s regulations form the contract of mortgage insurance between FHA and the mortgagee, which has always been regarded as separate and distinct from the private mortgage contract between mortgagee and borrower. However, the Department also acknowledges the incidental benefits of incentivizing mortgagee compliance with FHA requirements by incorporation of a similar, separate contractual right in

the private mortgage contract between the mortgagee and borrower. The reintroduction of language in the proposed change to Sections 22 similar to that contained in the previous Paragraph 9(d) may serve to again further this goal.

The Department is also proposing a revision to Section 20, which generally provides that the borrower is not a third-party beneficiary to the contract of mortgage insurance between the lender and FHA. Legally, FHA borrowers have never been deemed third-party beneficiaries of the mortgage insurance contract between FHA and the mortgagee, and therefore, have had no authority to enforce any provisions thereof. However, as reflected in the proposed changes to Sections 22, the borrower and lender will enjoy contractual rights and obligations under the private mortgage contract that happen to mirror elements of the mortgage insurance contract because they both separately rely on HUD's regulations. By asserting rights under the private mortgage contract, even those that incorporate elements of the regulations forming the mortgage insurance contract, borrowers would not be enforcing the contract of mortgage insurance and FHA regulations as such, but rather enforcing the private contractual terms incorporated into the mortgage contract that mirror those regulations.

While aiming to clearly delineate the lines between the private mortgage contract and the contract of mortgage insurance through the language contained in Section 20, the Department does not wish to cause any confusion concerning the borrower's ability to enforce his or her rights that have been granted through the incorporation of certain regulatory provisions. Therefore, for clarity, the Department is proposing a revision to Section 20 that eliminates any confusion regarding the borrower's ability to assert rights under the private mortgage contract with the mortgagee as provided in the proposed changes to Section 22. The proposed revision to Section 20 does not jeopardize the settled fact that borrowers are not third-party beneficiaries

of the mortgage insurance contract and do not have the authority to enforce any provisions thereof. This is a consequence of well-established legal principals governing contractual relationships and privity, which will remain unchanged notwithstanding the proposed revision. HUD expects, therefore, that the proposed change renders Section 20 more apparently consistent with the proposed changes to Sections 22, but does not intend to create third-party rights under the mortgage insurance contract.

The following information regarding respondents and number of responses is based on information related to the actual legal mortgage document, not the model mortgage document.

Affected Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2535.

Estimated Number of Responses: 164,447.

Frequency of Response: On Occasion.

Average Hours per Response: .05.

Total Estimated Burdens: 822 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Date: November 23, 2016

Janet M. Golrick,
Associate General Deputy Assistant Secretary for
Housing Associate Deputy Federal Housing
Commissioner

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